

communication

OLL 84-0418
31 January 1984

MEMORANDUM FOR: Director of Security
Director of Communications
Deputy Director of Personnel
for Special Programs

[REDACTED]
C/ILD/OGC
C/ALD/OGC

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FROM:

[REDACTED]
Legislation Division
Office of Legislative Liaison

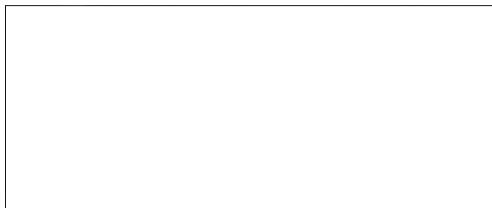
SUBJECT: Recently Introduced Legislation Prohibiting
the Recording of Telephone Conversations
Without the Consent of all Parties to the
Communication

1. Attached for your review and comment are two recently introduced bills, S. 2205 and H.R. 4620, prohibiting the recording of telephone conversations without the consent of all parties to the communication. Senator Bumpers (D. Ark.) introduced S. 2205 and Representative Brooks (D. Tex.) introduced H.R. 4620. Also attached for your information are the introductory statements for these bills from the Congressional Record.

2. While representing different legislative approaches, both S. 2205 and H.R. 4620 are a legislative response to the press revelation that U.S. Information Director Charles Z. Wick was recording his telephone conversations, frequently without the consent of the other party to the communication. S. 2205 simply amends section 2511 of Title 18 of the United States Code (copy attached) to require the prior consent of all parties to a communication, if the person intercepting the communication is not acting under color of law. In contrast to S. 2205, H.R. 4620 amends the Federal Property and Administrative Services Act of 1949 (FPASA) to limit the recording or listening-in on phone conversations by federal officers or employees without all parties' consent. H.R. 4620 provides for several exceptions to this general prohibition and establishes administrative and recordkeeping procedures. However, it is arguable that H.R. 4620 would not apply to the official functions of the Agency in light of the CIA exemption in the FPASA. See 40 U.S.C. §474(17).

3. Please forward any comments you may have on the impact of these bills on Agency activities to the undersigned.

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Attachments

cc: DC/L&PLD/OGC

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 Liaison

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ROD:csh (2 February 1984)

§ 2511. Interception and disclosure of wire or oral communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) (a) (i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: *Provided*, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

(A) a court order directing such assistance signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof, shall render the carrier liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act.

(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

98TH CONGRESS
2D SESSION

S. 2205

To amend section 2511 of title 18, United States Code.

IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 23), 1984

Mr. BUMPERS (for himself, Mr. RUDMAN, Mr. RANDOLPH, Mr. RIEGLE, Mr. HUDDLESTON, and Mr. MELCHER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 2511 of title 18, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That subsection 2(d) of section 2511 of title 18, United
4 States Code, is amended by deleting the following words:
5 “where such person is a party to the communication or
6 where one of the parties to the communication has given
7 prior consent”, and inserting in lieu thereof: “where all par-
8 ties to the communication have given prior consent”.

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TENBERG, Mr. MELCHER, Mr. HOLINGS, Mr. HATFIELD, and Mr. BOSCHWITZ):

S. 2207. A bill to amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes; to the Committee on Finance.

By Mr. HATFIELD:

S. 2208. A bill for the relief of Spalding and Sons, Inc.; to the Committee on the Judiciary.

By Mr. PERCY (by request):

S. 2209. A bill to authorize a system of approval and permitting by the U.S. Commissioner of the International Boundary and Water Commission for construction in the limitrophe sections of the Rio Grande and the Colorado River, and for other purposes; to the Committee on Foreign Relations.

By Mr. SIMPSON:

S. 2210. A bill to revise and clarify the eligibility of certain disabled veterans for automobile adaptive equipment; to the Committee on Veterans Affairs.

By Mr. BAKER (for Mr. NICKLES) (for himself, Mr. BAKER, Mr. JEPSEN, Mrs. KASSEBAUM, Mr. KASTEN, Mr. DeCONCINI, Mr. BOREN, and Mr. BURDICK):

S. 2211. A bill to reduce the rates of pay of Members of Congress by the amount of the increase taking effect on January 1, 1984, and for other purposes, placed on the calendar.

By Mr. BURDICK:

S.J. Res. 211. Joint resolution designating the week of November 18, 1984, through November 24, 1984, as "National Family Week"; to the Committee on the Judiciary.

By Mr. THURMOND (for himself, Mr. HATCH, and Mr. GRASSLEY):

S.J. Res. 212. Joint resolution proposing an amendment to the Constitution of the United States relating to voluntary silent prayer or meditation; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. STEVENS:

S. Res. 308. Resolution expressing the sense of the Senate that the Federal Communications Commission should take further steps to safeguard universal telephone service in the wake of the American Telephone and Telegraph Co. divestiture; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS:

S. Con. Res. 87. Concurrent resolution relating to the dismantling of nontariff trade barriers of the Japanese to the import of beef; to the Committee on Finance.

By Mr. CHILES (for himself, Mr. NUNN, Mr. THURMOND, Mrs. HAWKINS, Mr. SYMMS, Mr. BOREN, Mr. MOYNIHAN, Mr. SIMPSON, Mr. DeCONCINI, Mr. DENTON, and Mr. BOSCHWITZ):

S. Con. Res. 88. Concurrent resolution expressing the sense of the Congress that the Secretary of State should request the Organization of American States to consider as soon as possible the question of the involvement by the Government of Cuba in drug dealing, smuggling, and trafficking in the Western Hemisphere; to the Committee on Foreign Relations.

By Mr. CHILES (for himself, Mr. NUNN, Mr. THURMOND, Mrs. HAWKINS, Mr. SYMMS, Mr. BOREN, Mr. MOYNIHAN, Mr. SIMPSON, Mr. DeCONCINI, Mr. DENTON, and Mr. BOSCHWITZ):

S. Con. Res. 89. Concurrent resolution urging the President to direct the Permanent Representative of the United States to the United Nations to bring before the United Nations the question of the involvement by the Government of Cuba in drug dealing, smuggling, and trafficking; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUMPERS (for himself, Mr. RUDDMAN, Mr. RANDOLPH, Mr. RIEGLE, Mr. HUDDLESTON, and Mr. MELCHER):

S. 2205. A bill to amend section 2511 of title 18, United States Code; to the Committee on the Judiciary.

TAPING OF CONVERSATIONS

Mr. BUMPERS. Mr. President, this morning I am introducing a bill directly as a result of the U.S. Information Agency Director Mr. Wick's recording telephone conversations with everybody who called him, without telling the parties that he was talking to that they were being recorded.

My guess is that most people in this country probably assumed that such conduct was at a minimum a misdemeanor. But it is not only not a misdemeanor, it is not anything except a violation of Federal regulations.

According to some of the press clippings, incidentally, Mr. Wick was warned by various persons that he was in violation of Federal regulations by recording telephone conversations. And yet he persisted. As another Senator, I believe yesterday, said so ably on this floor, if Mr. Wick did not know it was wrong or at least if he did not think it was unethical, there was absolutely no reason for him to lie when he was first asked, "Have you been recording conversations," and he said, "No."

Later on he was asked again and he said yes, he did, in fact, record two or three conversations. And then on the third inquiry he said, "Yes, I have been recording everything."

One of the really interesting things about Mr. Wick's conduct—and I do not intend to dwell on him at length but I must say that he has done the Nation a favor by pointing up a vast chasm in our criminal laws—one of the things he did I really thought was interesting and astounding was to call somebody and record the conversation he had initiated. It is bad enough to record a conversation when you are called by someone else, but he called a former President, Jimmy Carter, and said, "Mr. President, what do you think about arms control?" and proceeded to record the conversation.

I daresay there is not a person in this body, there is not a person in Government, who would like to have his or her daily telephone conversations broadcast across the country.

There are 81 tapes that Mr. Wick recorded now reposed with the Senate Foreign Relations Committee. With all due respect to that committee or any other committee that deals with the situation, anyone who thinks that some of the more scintillating parts of those conversations are not going to be put into the national press is buying the Brooklyn Bridge.

I am sure that Jim Baker at the White House, President Carter, Ed Meese and whoever else was recorded, all those people are very apprehensive about those phone calls. I think the one with James Baker from the White House has already been largely revealed.

But, Mr. President, to get down to the substance of my bill and to describe the status of existing law on this kind of a situation, here it is: There is presently a criminal statute, 18 U.S.C. 2511, that makes it a crime to record telephone conversations without telling the other party or parties to the conversation, but there is an exception, and the exception is big enough to drive 10 wagons and teams through. The truth of the matter is that the exception says do not record unless you happen to have the urge.

Here is the law. Section 2511 of title 18, United States Code, says that anyone who:

Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication, et cetera, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

But listen to this exception at subsection (2)(d):

It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution and laws of the United States or any State or for the purpose of committing any other injurious act.

That is the sorry sad state of laws on communication intercepts.

What my bill does, very simply, is to modify that exception by striking out "where such person is a party to the communication or where one of the parties to the communication has given prior consent" and inserting instead "where all parties to the communication have given prior consent."

In the future, then, it will be a violation of the criminal laws, it will be a felony subject to a \$10,000 fine and 5 years in prison, if you record without telling the person on the other end that you are recording.

Now, maybe someone is thinking that law enforcement agencies use undercover agents; they put body recorders on persons who then go out and visit someone else and get them to admit that they have committed a crime, or that they are about to, or

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that they are part of a conspiracy. This bill does not in any way limit law enforcement officers from using body recorders, or even recording telephone conversations without telling the other party, if they are doing it under color of law as a law enforcement officer.

My bill will only control people like Mr. Wick or anyone else who is not acting in a law enforcement capacity. I do not believe very many people in this Nation engage in this kind of privacy invading activity. I do not know, but I will say this, Mr. President, I have been terribly exercised about this revelation concerning Mr. Wick. I do not believe we enjoy a single freedom more precious than the right to be secure in our homes and the right against our privacy being invaded. How can you invade someone's privacy more than by surreptitiously recording a telephone conversation in which you may try to lead the person into making certain statements? It may then be used for political purposes. It may be used for a whole host of purposes, but all of them constitute an invasion of privacy.

When I call the radio station in my home State, they say, "Senator, just a minute. Let me get a tape rolling." I know I am being recorded. And I must say there are 100 Senators who are very circumspect about what they say when they call a radio station and know they are being recorded.

I have heard that the writing press on occasion tape-records a conversation without telling the person that they are recording it. Frankly, I have some doubts about that. On occasion I have had a member of the writing press say to me, "Senator, do you mind if I record this?" And I say, "Absolutely not; be my guest."

That is just like a reporter from the Wall Street Journal coming into my office yesterday afternoon and saying, "Senator, do you mind if I use this recorder?" "Not at all."

But if he came into my office and was not a law enforcement officer, and I found out later that he had a recorder taped to his body and was recording everything I said, I would be terribly agitated just as he would if the situation were reversed.

Mr. President, I consider this a very serious matter. I sincerely hope that we will immediately have over 50 cosponsors to this bill, and that the Judiciary Committee will expedite hearings on the bill immediately.

Even though I have heard it said that little is going to happen during this session—maybe it is not—but this should be one of the things that happens, that this bill passes.

Mr. President, let me just read one final thing, because I think this says it better than I could say it.

Olin Robison, president of Middelburg College—

Incidentally, that is an outstanding educational institution.

—has resigned from the United States Advisory Commission on Public Diplomacy to protest the surreptitious taping of telephone conversations by Charles L. Wick, director of the United States Information Agency.

The seven-member advisory body is charged with overseeing the operations of the U.S.I.A. It was founded in 1978 with Mr. Robison, a Democrat, and its first chairman.

In letters to President Reagan and to Mr. Wick, dated Monday, Mr. Robison acknowledged that his term on the commission was almost over but said he wanted to speak out as a citizen regarding Mr. Wick's taping of telephone conversations.

And here is what he said:

What is at issue is the unethical taping of conversations without the knowledge of some or many individuals, and, secondly, the public perception that when confronted with this fact, you failed to admit the extent or complete nature of this activity.

And here is part of a column by Richard Cohen.

Hark ye who think ye live in modern times, come see the political equivalent of medieval medicine in which the cure is worse than the disease. I am referring to that tempest in a tape deck, the Wick Affair, in which the director of the U.S. Information Agency secretly taped his own phone calls. He is accused of invasion of privacy. As a result, his and lots of other people's privacy has been invaded.

At the moment, for instance, 81 transcripts of Charles Z. Wick's tapes are sitting in the offices of the Senate Foreign Relations Committee and the House Foreign Affairs Committee. In addition, both committees have stenographic notes of 83 other conversations. The transcripts and notes are being read by seven staff aides, two in the Senate and five in the House, and will be made available to members of both committees—a total of 52 lawmakers.

Should you believe that the contents of these tapes (especially the more interesting ones) will not surface in the press, I have a bridge in Brooklyn to sell you. Even before Congress got into the act, partial transcripts were printed in the press. And now the House committee, indicating that the only thing more sacred than privacy is publicity, has urged Wick to publish it all—after, of course, getting the permission of those he taped.

Some may think Wick has it coming to him. His actions were certainly sneaky, probably unethical, maybe even illegal. But the man has (reluctantly) acknowledged his foul deed. The tapes are a redundancy. They prove only what Wick already has admitted: he violated the privacy of many people. Now others will do it wholesale.

Mr. President, there is another provision in the Constitution of the United States applicable here, and I am absolutely amazed when I think about how farsighted our Founding Fathers were when they included the provision that says there shall be no laws passed ex post facto. If we could pass laws to make conduct a crime that has already occurred, everyone would want to pass a law to send Mr. Wick to the penitentiary.

Mr. Wick is no longer relevant. We owe him a debt of gratitude for highlighting a terrible void in the criminal laws of this country, and I am seeking to rectify it. I urge the prompt passage of this measure.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2205

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 2(d) of §2511 of Title 18 United States Code is amended by deleting the following words: "where such person is a party to the communication or where one of the parties to the communication has given prior consent", and inserting in lieu thereof: "where all parties to the communication have given prior consent".

By Mr. KASTEN:

S. 2206. A bill to reduce the rates of pay of Members of Congress by the amount of the increase taking effect on January 1, 1984; to require a recorded vote on each legislative measure providing for an increase in such rates of pay, and for other purposes; to the Committee on Governmental Affairs.

ROLLBACK OF CONGRESSIONAL PAY INCREASE

Mr. KASTEN. Mr. President, today I am introducing legislation to rollback the most recent congressional pay increase. At a time when \$200 billion deficits threaten our economy, it is just plain wrong for Members of Congress to give themselves another pay increase. Fiscal restraint should begin here at home.

The legislation I am introducing today does two things. First, it eliminates the most recent pay increase, which went into effect on January 1. Second, it requires that a recorded vote be taken on any future measure leading to a pay increase for Members of Congress.

On January 1, Members of Congress received a raise of \$2,400. This increase was on top of a \$9,137.50 pay increase that the Senate gave itself July 1. These two raises mean increased salaries for Members of the Senate of over \$11,500 in the past 6 months alone.

Many Americans live on an income that is far less than that. As the elected representatives of the people, we cannot in good faith ask our constituents to help reduce Federal spending when we give ourselves this special treatment. Instead, elected representatives should set an example of restraint.

The second component of my bill requires that a recorded vote be taken on any future congressional pay increase. We should also have the courage to go on record when we do raise our own salaries. This would eliminate any automatic or back door raises Congress has created for itself.

I hope that many of my colleagues will join me in this effort to review the policies governing congressional pay increases and to eliminate the second raise we gave ourselves on January 1.

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ing the whole venture. The forces stay, exposed and without a hope of influencing any event. Their only mission, tragically, is simply to stay alive. There is no conceivable way that troops could be any more uselessly employed than in such a mission—a mission to stay alive; a mission that denies them any real military role, in a climate where the only politics is the ancient politics of religious and fratricidal conflict. It is a place, in the words of the administration's commission on the Beirut disaster, where "There is no sense of national identity that unites all Lebanese or even a majority of its citizenry." It is, again in the words of that report, a place "beset with virtually every unresolved problem of the Middle East." It is a place where anarchy rules, and where there has been no genuine progress toward any of the objectives that our Government seeks. Yet the marines stay, unable to move, unable to do anything except struggle to stay alive, kept there by a government that is unwilling to recognize the enormity of its mistake.

There is no realistic thing to do in Lebanon other than to get out. It has been clear since the bombing of the U.S. Embassy in Beirut on April 18, 1983, that Americans had become targets for attack, no longer seen as peacekeepers. But the policy did not change then, nor after the first marines were killed, nor has it changed since the bombing of the Marine headquarters building and all the loss of life in that disaster. If the conditions precedent to a given policy are no longer valid, then the policy may not be valid. And clearly, the conditions in Lebanon are different today. They are so different that the Marines have only one occupation, and that is self-protection. Such is not the condition of success. Such is not the sign that the policy is working or that it is any longer valid. I have called for the withdrawal of Marines from Lebanon since last spring, have done so repeatedly before and after the loss, the needless loss of so many lives. And during the period between sessions of this Congress, I asked the Speaker to reconvene the House to reconsider the question of Lebanon, as did many of my colleagues. I make my letter to the Speaker a part of the Record:

DECEMBER 13, 1983.

HON. THOMAS P. O'NEILL,
The Speaker of the House, The Capitol,
Washington, D.C.

DEAR MR. SPEAKER: Though I did not agree and did not vote for, the fact nevertheless is that the Congress did approve last September Senate Joint Resolution 159 with regard to the critical issue of Lebanon.

I felt—and continue to so feel—that the debate, instead of addressing itself to the War Powers Limitation Act, degenerated into a loyalty test to the Commander in Chief and ended up a sort of Second Bay of Tonkin Resolution, festooned and adorned with vague promises and commitments by the Commander in Chief—and repudiated on the day signed by the Secretary of State and now the Commander in Chief.

Since that time, Mr. Speaker, you must agree, the situation in Lebanon has changed radically, as well as the nature of the United States commitment. More than 240 Marines have died unnecessarily, with no clear indication from their Commander in Chief as to just what the nature of their mission was.

The President still refuses to tell Congress or the American people in clear and coherent way what that mission is. The Marines are still in the shadow of death or serious bodily harm.

Mr. Speaker, the Congress no longer can escape the responsibility—with the Commander in Chief—for the lives of these brave Americans.

Their blood, Mr. Speaker, will be on Congress' hands, as that spilled already stains the Commander in Chief's.

At the present time, the specter of a deepening and irrevocable commitment moves closer to reality.

Must we wait until more Americans die, some of our ships are sunk, our airplanes shot down? By then, Mr. Speaker, congressional action will be moot.

Our Commander in Chief struts with a nuclear chip on his shoulder daring the bully boys of the world to knock it off.

It's time, Mr. Speaker, to restrain him to the Constitution.

I urge the summoning and reconvening of the Congress.

Sincerely,

HENRY B. GONZALEZ,
Member of Congress.

The Speaker and the House leadership as a whole have since then expressed impatience with the situation in Lebanon. But that has not produced any changes. We are left with only one alternative, and that is to recognize what we failed to recognize last year: that the mission in Lebanon is a failure and creates a needless risk to lives, and it is time to get out. Congress can do more than wring its hands on this matter; it can do more than express impatience; it can recognize the facts and cancel the resolution that empowers the President to keep the troops in Lebanon. We should do that forthwith. Surely, if anyone has any question about it, the administration's own evaluations show that it is long since past time to try another policy, to get the troops out, and to quit pretending that there is anything useful to be gained from hanging onto the bunkers of the Beirut airport.

Finally, there is the question of arms control. No rational human being could say that the number and power of nuclear arms in the world has made the world any safer. Nor could any fair analyst say that anything was gained by the torpedoing of the SALT II agreement and subsequent refusal to negotiate for 18 months. All that this brought was another round of an incredibly costly and incalculably dangerous arms race. And it has brought a Russian unwillingness to negotiate. I do not think any one of us, being responsible and knowledgeable, would advocate simple, unilateral disarmament. Yet who among us could say that present policies have made anyone feel more secure? Who among us could say that we have seen success in arms control? Who among us could say that we have bought progress or

even the promise of it? Who among us would deny that there is nothing more urgent than to seek a way out of the morass? It is time for a good-faith call to negotiation. It is time for a national consensus on arms control—for this is a question above any partisan politics. The business of actual solution to our dilemma, of course, depends on the arithmetic of Armageddon—but it also depends on an ability to establish some common ground for negotiation. If common survival is not a sufficient ground, I do not know what is. And I urge the leadership of the House to insist on good-faith negotiations—not as a party issue, not as a political ploy, nor as a campaign strategy—but as a matter in the human interest, and in the interest of survival itself.

We have in these past 3 years approached all crises with the attitude that if we have enough sticks, or build bigger sticks, or sell enough sticks, all the problems will go away. It has not happened. Arms are not in and of themselves a solution to anything. It is time to move away from an endless commitment to force or the threat of it; such a policy has not helped, and in fact has made conditions worse. It is time to rethink and time to put our energies to more productive use, for our country's sake, and for the sake of peace itself. The question is war or peace; the answer is in good part dependent on our own actions.

H.R. 4620

INTRODUCTION OF BILL TO RESTRICT THE LISTENING IN OR RECORDING OF TELEPHONE CONVERSATIONS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. Brooks) is recognized for 5 minutes.

● Mr. BROOKS. Mr. Speaker, today I am introducing the Federal Telecommunications Privacy Act of 1984. This bill will severely limit the practice of listening in or recording of telephone conversations within the Federal Government. Specifically, it prohibits such practices by Federal officials without the consent of all parties. The only exceptions provided are for the purposes of, first, law enforcement; second, counterintelligence; third, public safety; fourth, service monitoring; or, fifth, assisting handicapped employees of the Federal Government.

The policies and procedures established by this legislation are similar to the requirements of existing Federal regulations which have been issued by the General Services Administration (GSA). Unlike the GSA regulations, this bill contains enforcement provisions to insure that Federal officials do not resort to the abusive practice of secretly recording private conversations.

First, it establishes that any recording of telephone conversations would fall under the provisions of the Privacy Act of 1974—Public Law 93-579. As

January 24, 1984

CONGRESSIONAL RECORD — HOUSE

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such, any improper disclosure of these recordings would be subject to criminal penalties. Second, it makes each recorded conversation a Federal record and any Federal official who unlawfully alters or destroys these records would be subject to dismissal as well as criminal penalties.

It is unfortunate that this legislation is needed. Most Federal employees conduct Government business in a professional and ethical manner. However, there are always a few who will ignore any rule that does not carry with it a strict penalty. This bill should get their attention.●

FISCAL YEAR 1984 SPENDING AND REVENUE LEVELS

(Mr. JONES of Oklahoma asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

● Mr. JONES of Oklahoma. Mr. Speaker, pursuant to the procedures of the Committee on the Budget and section 311(b) of the Congressional Budget Act of 1974, I am submitting to the Record a letter to the Speaker advising him of the current level of spending and revenues for fiscal year 1984.

COMMITTEE ON THE BUDGET,
Washington, D.C., January 23, 1984.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On January 30, 1976, the Committee on the Budget outlined the procedure which it had adopted in connection with its responsibilities under Section 311 of the Congressional Budget Act of 1974 to provide estimates of the current level of revenues and spending.

Pursuant to Committee Rule 10, I am herewith transmitting the status report under H. Con. Res. 91, the First Concurrent Resolution on the Budget for Fiscal Year 1984. This report reflects the adjusted resolution of October 25, 1983, and the current CBO estimates of budget authority, outlays, and revenues based on all completed action on spending and revenue measures as of the convening of the Second Session of the 98th Congress.

With best wishes,
Sincerely,

JAMES R. JONES,
Chairman.

REPORT TO THE SPEAKER OF THE U.S. HOUSE OF REPRESENTATIVES FROM THE COMMITTEE ON THE BUDGET ON THE STATUS OF THE FISCAL YEAR 1984 CONGRESSIONAL BUDGET ADOPTED IN HOUSE CONCURRENT RESOLUTION 91

REFLECTING COMPLETED ACTION AS OF JAN 23, 1984

(In millions of dollars)

	Budget authority	Outlays	Revenues
Appropriate level.....	923,809	853,386	679,600
Current level.....	920,730	853,224	665,286
Amount Under Ceilings.....	3,079	162	
Amount Under Floor.....			14,314

BUDGET AUTHORITY

Any measure providing budget or entitlement authority which is not included in the current level estimate and that exceeds

\$3,079 million for fiscal year 1984, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in H. Con. Res. 91 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and that exceeds \$162 million in outlays for fiscal year 1984, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 91 to be exceeded.

REVENUES

Any measure that would result in a revenue loss for fiscal year 1984, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in H. Con. Res. 91.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., January 23, 1984.
Hon. JAMES R. JONES,
Chairman, Committee on the Budget, U.S.
House of Representatives, Washington,
D.C.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311(b) of the Congressional Budget Act, this letter and supporting detail provide an up-to-date tabulation of the current levels of new budget authority, estimated outlays and estimated revenues in comparison with the appropriate levels of those items contained in the most recently agreed to concurrent resolution on the 1984 budget (H. Con. Res. 91). This report for fiscal year 1984 is tabulated as of the convening of the Second Session of the 98th Congress and is based on our estimates of budget authority, outlays, and revenues using the assumptions and estimates consistent with H. Con. Res. 91.

This report summarizes the 1984 current levels of budget authority, outlays, and revenues as the 98th Congress begins its second session.

(In millions of dollars)

	Budget authority	Outlays	Revenues
1. Enacted.....	917,005	849,936	665,286
2. Entitlement authority and other mandatory items requiring further appropriation action.....	3,724	3,289	
3. Continuing resolution authority.....			
4. Conference agreements ratified by both Houses.....			
Current level.....	920,730	853,224	665,286
Budget resolution, H. Con. Res. 91.....	923,809	853,386	679,600
Current level is:			
Over resolution by.....			
Under resolution by.....	3,079	162	14,314

Sincerely,

RUDOLPH G. PENNER,
Director.

PARLIAMENTARIAN STATUS REPORT HOUSE SUPPORTING
DETAIL, FISCAL YEAR 1984 AS OF THE CONVENING OF
THE 98TH CONGRESS 2D SESSION

(In millions of dollars)

	Budget authority	Outlays
I. Enacted.....		
Permanent appropriations and trust funds.....	535,903	491,993
Appropriations enacted previous session.....	522,190	499,031
Offsetting receipts.....	-141,088	-141,088
Enacted this session.....		
Total enacted.....	917,005	849,936
II. Entitlement authority and other mandatory items requiring further appropriation action.....		
Child nutrition.....	417	222

PARLIAMENTARIAN STATUS REPORT HOUSE SUPPORTING
DETAIL, FISCAL YEAR 1984 AS OF THE CONVENING OF
THE 98TH CONGRESS 2D SESSION—Continued

(In millions of dollars)

	Budget authority	Outlays
Department of Defense.....		
Civilian pay raises.....	436	422
Military pay raises.....	1,205	1,169
Retired pay, Defense.....	133	65
Claims, Defense.....	63	57
Payment to Foreign Service Retirement Fund.....	3	3
Offsetting receipts.....	-3	-3
Range improvements.....	2	1
FUBA (TAA extension, Public Law 98-120).....	33	33
Medicaid.....	556	556
Advances to unemployment:		
Insurance trust fund.....	3,932	3,932
Offsetting receipts.....	-3,932	-3,932
Special benefits, disabled coal miners.....	20	20
Special benefits, Federal employees.....	12	12
Social services block grants.....	25	25
Rehabilitation services and handicapped research.....	34	28
Guaranteed student loan program.....	132	
Payment to civil service retirement fund.....	230	230
Offsetting receipts.....	-230	-230
Civilian agency pay raises.....	657	678
Total.....	3,724	3,289
III. Continuing resolution authority ¹		
IV. Conference agreements ratified by both Houses.....		
Total, current level as of Jan. 23, 1984.....	920,730	853,224
Budget resolution, H. Con. Res. 91.....	923,809	853,386
Amount remaining:		
Over ceiling.....		
Under ceiling.....	3,079	162

¹ Agriculture; Commerce, State, Justice; foreign assistance; Treasury, Postal Service and General Government and other selected appropriations are funded under continuing resolution authority (Public Law 98-151) for the full fiscal year and, therefore, are included in the enacted category of this report.
Note: Detail may not add due to rounding.●

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SUNDBLUST) to revise and extend their remarks and include extraneous material:)

Mr. WALKER, for 60 minutes, today.

Mr. GINGRICH, for 60 minutes, today.

Mr. MACK, for 60 minutes, today.

Mr. WALKER, for 60 minutes, January 25.

Mr. GINGRICH, for 60 minutes, January 25.

Mr. MACK, for 60 minutes, January 25.

Mr. WEBER, for 60 minutes, January 25.

(The following Members (at the request of Mr. MINETA) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. RAHALL, for 5 minutes, today.

Mr. STARK, for 5 minutes, today.

Mr. GONZALEZ, for 30 minutes, today.

Mr. BROOKS, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. SUNDBLUST) and to include extraneous matter:)

Mr. COURTER in two instances.

I

98TH CONGRESS
2D SESSION

H. R. 4620

To prohibit the recording of conversation made on the Federal telecommunications system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 1984

Mr. BROOKS introduced the following bill; which was referred jointly to the Committees on Government Operations and Post Office and Civil Service

A BILL

To prohibit the recording of conversation made on the Federal telecommunications system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Telecommunica-
4 tions Privacy Act of 1984".

5 SEC. 2. Title I of the Federal Property and Administra-
6 tive Services Act of 1949 is amended by adding at the end
7 thereof the following new section:

1 “RECORDING OF CONVERSATIONS ON FEDERAL
2 TELECOMMUNICATIONS SYSTEM

3 “SEC. 113. (a)(1) Except as provided in subsections (b),
4 (c), and (d), no Federal officer or employee shall cause or
5 permit the recording of, or listening-in upon, any conversa-
6 tion conducted on the Federal telecommunications system es-
7 tablished under section 7 of the Act of June 14, 1946 (40
8 U.S.C. 295), or made available under section 110 of this Act.

9 “(2) Except as provided in subsections (b), (c), and (d),
10 no Federal officer or employee shall cause or permit the re-
11 cording of, or listening-in upon, any conversation conducted
12 on any other telecommunications system if the conversation
13 (A) is between a Federal officer or employee and any other
14 person and (B) involves the conduct of Government business.

15 “(b) Without the consent of any party to a conversation,
16 the recording of, or listening-in upon, such conversation may
17 be conducted notwithstanding subsection (a) if such recording
18 or listening-in is authorized under, and conducted in accord-
19 ance with the requirements of, the Omnibus Crime Control
20 and Safe Streets Act of 1968 (18 U.S.C. 2510 et seq.) or the
21 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
22 1801 et seq.).

23 “(c) With the consent of one party to a conversation, the
24 recording of, or listening-in upon, such conversation may be
25 conducted notwithstanding subsection (a) if the recording or

1 listening-in is performed in accordance with the following
2 conditions:

3 “(1) The recording or listening-in is performed for
4 law enforcement purposes in accordance with proce-
5 dures established by the agency head, as required by
6 the Attorney General’s guidelines for the administra-
7 tion of the Omnibus Crime Control and Safe Streets
8 Act of 1968, and in accordance with procedures estab-
9 lished by the Attorney General.

10 “(2) The recording or listening-in is performed for
11 counterintelligence purposes and approved by the At-
12 torney General or the Attorney General’s designee.

13 “(3) The recording or listening-in is performed by
14 any Federal employee for public safety purposes and
15 documented by a written determination of the agency
16 head or the designee that cites the public safety needs
17 and identifies the segment of the public needing protec-
18 tion and cites examples of the hurt, injury, danger, or
19 risks from which the public is to be protected.

20 “(4) The recording or listening-in is performed by
21 a handicapped employee, provided a physician has cer-
22 tified (and the head of the agency or designee concurs)
23 that the employee is physically handicapped and the
24 head of the agency or designee determines that the use
25 of a listening-in or recording device is required to fully

1 perform the duties of the official position description.
2 Equipment shall be for the exclusive use of the handi-
3 capped employee. The records of any interceptions by
4 handicapped employees shall be used, safeguarded, and
5 destroyed (notwithstanding subsection (h) of this sec-
6 tion) in accordance with appropriate agency records
7 management and disposition systems.

8 “(5) The recording or listening-in is performed by
9 any Federal agency for service monitoring but only
10 after analysis of alternatives and a determination by
11 the agency head or the agency head’s designee that
12 monitoring is required to effectively perform the agency
13 mission. Strict controls shall be established and ad-
14 hered to for this type of monitoring.

15 “(d) With the consent of all the parties to a conversa-
16 tion, the recording of, or listening-in upon, such conversation
17 may be conducted notwithstanding subsection (a). This in-
18 cludes telephone conferences, secretarial recording, and other
19 acceptable administrative practices. Strict supervisory con-
20 trols shall be maintained to eliminate any possible abuse of
21 this privilege. The agency head or the agency head’s desig-
22 nee shall be informed of this capability for listening-in or re-
23 cording telephone conversations.

24 “(e)(1) Each agency shall ensure that—

1 “(A) all listening-in or recording of telephone con-
2 versations pursuant to paragraph (3), (4), or (5) of sub-
3 section (c) shall have a written determination approved
4 by the agency head or the agency head’s designee
5 before operations; and

6 “(B) service personnel who monitor listening-in or
7 recording devices shall be designated in writing pursu-
8 ant to paragraph (5) of subsection (c) and shall be pro-
9 vided with written policies covering telephone conver-
10 sation monitoring which shall contain at a minimum
11 the following instructions:

12 “(i) no telephone call shall be monitored
13 unless the Federal agency has taken continuous
14 positive action to inform the callers of the moni-
15 toring;

16 “(ii) no data identifying the caller shall be re-
17 corded by the monitoring party;

18 “(iii) the number of calls to be monitored
19 shall be kept to the minimum necessary to com-
20 pose a statistically valid sample;

21 “(iv) agencies using telephone instruments
22 that are subject to being monitored shall conspicu-
23 ously label them with a statement to that effect;
24 and

1 “(v) since no identifying data of the calling
2 party will be recorded, information obtained by
3 the monitoring shall not be used against the call-
4 ing party.

5 “(2) Current copies and subsequent changes of agency
6 documentation, determinations, policies, and procedures sup-
7 porting operations pursuant to paragraph (3), (4), or (5) of
8 subsection (c) shall be forwarded before the operational date
9 to the General Services Administration. Specific telephones
10 shall be identified in the documentation or determination to
11 prevent any possible abuse of the authority.

12 “(3) Procedures for monitoring performed under para-
13 graph (1) of subsection (c) shall contain at a minimum—

14 “(A) the identity of an agency official who is au-
15 thorized to approve the actions in advance;

16 “(B) an emergency procedure for use when ad-
17 vance approval is not possible;

18 “(C) adequate documentation on all actions taken;

19 “(D) records administration and dissemination pro-
20 cedures; and

21 “(E) reporting requirements.

22 “(4) Requests to the General Services Administration
23 for acquisition approval or installation of telephone listening-
24 in or recording devices shall be accompanied by a determina-
25 tion as defined in subsection (j)(2).

1 “(5) Each agency shall ensure that a program is estab-
2 lished to reevaluate at least every two years the need for
3 each determination authorizing listening-in or recording of
4 telephone conversations under this section.

5 “(f)(1) The General Services Administration shall be ac-
6 countable for information concerning the use of listening-in or
7 recording of telephone conversations in the Federal Govern-
8 ment as requested under paragraphs (3), (4), and (5) of sub-
9 section (c).

10 “(2) The General Services Administration shall periodi-
11 cally review the listening-in programs within the agencies to
12 ensure that agencies are complying with Federal property
13 management regulations.

14 “(3) The General Services Administration shall provide
15 assistance to agencies in determining what communications
16 devices and practices fall within the listening-in or recording
17 category. The General Services Administration shall also
18 provide guidance and assistance in the development of admin-
19 istrative alternatives to the listening-in or recording of tele-
20 phone conversations.

21 “(4) The General Services Administration shall take ap-
22 propriate steps to obtain compliance with this Act if an
23 agency has not documented its devices in accordance with
24 this section.

1 “(g) For purposes of section 552a of title 5, United
2 States Code, any recording or transcription of a conversation
3 made under (or in violation of) this Act shall be deemed to be
4 a record in a system of records (as such terms are defined in
5 subsection (a) (4) and (5) of such section) which pertains to
6 each party to such conversation, and each such party shall
7 have all the rights and remedies afforded to an individual
8 under such section.

9 “(h) Any recording or transcript of a conversation made
10 under (or in violation of) this Act shall constitute a record
11 deposited in a public office for purposes of section 2071 of
12 title 18, United States Code.

13 “(i) The functions and responsibilities of the General
14 Services Administration and of agency heads and agency
15 heads’ designees under this section shall not be delegated or
16 assigned.

17 “(j) For purposes of this section—

18 “(1) the term ‘Federal officer or employee’ in-
19 cludes any officer or employee of any contractor, advi-
20 sory committee, or consultant of an agency;

21 “(2) the term ‘determination’ means a written
22 document (usually a letter) that specifies the operation-
23 al need for listening-in or recording of telephone con-
24 versations, indicates the specific system and location
25 where it is to be performed, lists the number of tele-

9

1 phones and recorders involved, establishes operating
2 times and a specific expiration date, and justifies the
3 use, and is signed by the agency head or the agency
4 head's designee;

5 “(3) the term ‘agency head’s designee’ means only
6 the individual designated pursuant to section 3506(b) of
7 title 44, United States Code.”.

○

S 572

CONGRESSIONAL RECORD — SENATE

January 31, 1984

would be offered tonight and we could get on with it.

To repeat, I do not expect the Senate to be in late tonight. I anticipate we will go out about 8 o'clock, but since we are not making this schedule that we had informally and unofficially assigned for the completion of this matter and the five ancillary matters that must follow along after it, Senators should be on notice of the possibility of late sessions for the remainder of this week.

Mr. BUMPERS. Will the majority leader yield for a question?

Mr. BAKER. Yes.

Mr. BUMPERS. When the majority leader stated just as he came on the floor it did not look like we were able to work anything out, was he referring to the amendment of Senator METZENBAUM and I?

Mr. BAKER. Yes, Mr. President, I was. I had understood when I came to the floor that negotiations were perhaps underway to see if there was a compromise available on the basis of the issuance of an Executive order or some such, and I understand now there is not, at least for the time being, and it seems to me we could wait around for a day or two trying to unravel that, so instead I wish to say I wish Senators would go ahead and offer the amendment if they care to do so and let us get on with the debate.

Mr. BUMPERS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2689

(Purpose: To prevent Government officials from secretly taperecording conversations with others)

Mr. METZENBAUM. Mr. President, on behalf of myself, Senators BUMPERS, LEAHY, RIEGLE, RUDMAN, and RANDOLPH, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM), for himself, Mr. BUMPERS, Mr. LEAHY, Mr. RIEGLE, Mr. RUDMAN, and Mr. RANDOLPH, proposes an amendment numbered 2689:

On page 375, between lines 15 and 16, insert the following:

PART J—TAPERECORDING BY GOVERNMENT OFFICIALS

SEC. 1120. Section 2511 of title 18, United States Code, is amended by striking out subsection 2(c) and inserting in lieu thereof:

"(c) Under this chapter, it shall be unlawful for any person who is an official, elected official, appointed official, employee or agent of the United States not described in

the following sentence to intercept a wire or oral communication, unless all parties to the communication have given prior consent to such interception. It shall not be unlawful under this chapter for a person acting under color of law who is—

"(1) an investigative or law enforcement officer acting within the normal course of his or her employment; or

"(2) performing a law enforcement function under the direction and control of such an officer to intercept a wire or oral communication, where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception or where the communication constitutes a criminal or tortious act in violation of the laws of the United States or of any State.

Mr. METZENBAUM. Mr. President, we have before us a very, very modest amendment. It is an amendment that makes it illegal for a Government official, whether elected or appointed, or an employee of the Federal Government or an agent of the United States to intercept a wire or oral communication unless all parties to the communication have given prior consent to such interception.

Then it goes on to provide for appropriate exceptions with respect to the activities of our investigative agencies or law enforcement officers acting within the normal course of their employment, or if somebody has been called upon to perform a law enforcement function under the direction and control of such an officer. This is very, very limited. This country probably ought to have a broad general law prohibiting anybody from taping a telephone conversation without the consent of the other party. But rather than go to that length in this amendment at this point, Senator BUMPERS, who addressed himself to this issue the other day, and I and the other cosponsors—Senator LEAHY, Senator RIEGLE, Senator RUDMAN, Senator RANDOLPH—are offering this as an amendment to this package bill.

Frankly, it is difficult for me to understand why anybody could be against this proposal. The man who has received the most publicity in connection with this subject and the one who brought it up as a public issue has publicly indicated his own remorse and his apology for the acts in which he was engaged.

We have said to the Justice Department: "If you don't think that this bill is adequate or does it in the manner you think it should be done, tell us what amendments you want, and we will accept those amendments."

They said: "It is a very complicated subject, and there is a great body of law on this subject, and we haven't had a chance to study it."

We have a lot of things on which there is a great body of law. But the simple, elementary proposition of whether or not you tape somebody's telephone conversation without their knowing it is not very complicated. It is unethical, it is improper, it is illicit, and it should now be made illegal.

We have limited the provisions of this bill and will come with other legislation on which we can have full hearings to make it broad based across the country. But how can anybody claim that a member of Congress, a Senator, a public official, an employee of the Government, should have the right to tape a conversation without the consent of the other party?

I do not know the language and I do not know specifically the reference for it, but I am told that the provisions of this proposal actually do not go any further than the General Services Administration directive on this very subject.

As a matter of fact, we should not have to have a law. The President of the United States ought to direct every person on the Federal payroll, except the Members of Congress and the judiciary, that they cannot do that kind of thing. It is an egregious act. It is an act of which nobody can be proud.

We are told: "Wait. Don't offer this amendment. We will have hearings."

We are willing to have hearings on the main thrust of the bill generally, on the overall bill, but what we are talking about now is doing something at this moment about this subject, without delay.

Mr. President, I am happy to interrupt my remarks to indicate that the name of Senator LEVIN is also to be added as a cosponsor of this amendment, and I ask unanimous consent for that order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, across the entire Nation there have been editorials, upon editorials, upon editorials on this subject. In the Washington Post there have been articles galore—I do not know how many articles—and in the New York Times, which were right on the target. In fact, that paper should get a lot of credit. Mr. William Safire is entitled to credit for having broken this story in the first instance.

I want to make it clear that this is not an amendment offered in connection with an incident. This is not an amendment that has to do with a particular problem. This is an amendment that says what this Government's policy should be, what the laws of the United States should be; and those laws should prohibit anybody—any Federal employee, official, agent—from taping a conversation without having the consent of the other party.

Before this debate is concluded, I hope to insert into the RECORD some of the language that has been used on this issue—and it has been strong language—by the editorial writers, by the columnists.

I am disturbed. The managers of this bill have not seen fit to accept the amendment. They said to me: "We will be willing to accept it if Justice signs off."

January 31, 1984

CONGRESSIONAL RECORD — SENATE

S 573

I said: "OK. Let's ask Justice."

We asked Justice, and Justice said they might have some problems.

I said: "Tell me what your problems are, and we will amend the amendment."

I will say it publicly: If Justice does not like the way some particular provision of this measure is drafted and if they think in some way it will interfere with law enforcement activities, we will change it. They will not have to persuade us. They will not have to twist our arms. Not one of the proponents of this amendment wants to interfere in any way with the law enforcement activities of the United States, and we have provided language on that very point. If there is something else they want, we will provide that.

If it passes the Senate and they find that if needs to be changed at a later point, we will agree and urge the House to change it over there.

We do not want to affect the law enforcement activities of this country. What we want to do is to provide a sense of ethic, a sense of decency, a sense of propriety by Federal officials and Federal employees generally.

Need I point out to this body that this Nation has been embarrassed throughout the entire world by the activities of a former President of the United States, causing him to resign? We had this issue up then, it was a problem, and we thought that we would never have this kind of activity to talk about or to be concerned about after Watergate. We thought this kind of activity was behind us.

I am not standing on the floor now to make a cause celebre about the recently publicized incident. I am on the floor to say that the Senate has an opportunity to make it illegal to tape somebody's conversation without that person being apprised of the fact and consenting to it.

What a horrible travesty this Nation went through when its President saw fit to tape all the conversations of people in his office and on the telephones. There was a sense of embarrassment in this Nation and throughout the world. Was not once enough? Did we not learn our lesson? No.

Now we come forward with a bill, and we find an amendment, and we find that there is some feeling that, well, maybe we ought to just go to hearings. Why?

Why? The English language is clear. The amendment is clear. It is a simple amendment. If someone thinks it should be changed let him come forward with an amendment to undo the amendment and we certainly will consider it. Absent that, this amendment should be adopted without delay.

I have more to say on this subject.

The principal author of this amendment with myself is on the floor and ready to speak. I yield the floor to the distinguished Senator from Arkansas.

Mr. BUMPERS. Mr. President, I introduced S. 2205 about a week ago

which was much broader in its application than is the amendment the Senator from Ohio and I are offering this afternoon.

Lest anyone think that this is going to be the end of it, I can assure you it is not. I recognize that an outright prohibition applicable to all parties might indeed have some complications to it that may not be immediately apparent, and I hope that during the course of the debate on this amendment the Senators from the respective subcommittees in Judiciary will agree to expedite hearings on my bill which, as I say, is much broader than this amendment.

For the moment, I just want to talk about the sort of philosophical argument for the amendment, second, talk about what this particular amendment does and then, third, talk about the bill I introduced the other day which is broader in scope.

First of all, Members of this body should recognize that this is not a *ex post facto* effort to get at Charles Wick. We can be indebted to Charles Wick for having been caught tape recording conversation which, in itself, would not have gotten much publicity had he not denied it. As a matter of fact, he denied it twice. And it was his denial, I believe, more than the act which caused the press to blow it up and dramatize it to the American people and to Members of Congress.

But, as I say, the Founding Fathers in their infinite wisdom put a provision in the Constitution providing that Congress may not pass *ex post facto* laws to prosecute someone who has already perpetrated an act which we wish had been a crime.

I daresay, however, that if Gallup were to take a poll on the question whatever it is now a crime for one party to tape record a conversation with you without your permission, without your consent, and without your knowledge, whether that is now either a State or Federal crime, I think 90 percent of the people would respond by saying: "Certainly." And those 90 percent of the people would be wrong, at least in 37 of our 50 States.

If Gallup were to submit a second question and ask: "Do you think it should be a crime for someone to tape record a conversation with you without your prior consent and without your knowledge?" My guess is that more than 90 percent would say yes.

Let me appeal to the very simple, basic fairness of the Members of this body. Is there not something basically unfair about this practice, is it not kind of like windowpeeping? Have you thought about that? Everyone knows what a windowpeeper is. Only one party knows it is going on. That is a crime.

And in this particular case, can you think of anything more unfair than someone calling you and saying: "How are you getting along, John?"

"Fine. How are you?"

"Fine."

"John, someone told me you really tied one on at the Country Club last night."

"Yes, I guess I drank too much. I have gotten to where I do that quite often. I have got to start watching myself."

Is that not the kind of conversation people have every day? Well, it is unless you happen to hear it on the radio the next day. And yet under existing Federal law there is absolutely nothing wrong with the one party tape recording that. And yet someone's privacy has been invaded about as egregiously as possible.

Let me say again that I cannot help but refer to Charles Wick although I do not do so by choice. I do not know him. He may be a perfectly decent man. But it is very difficult for me to believe that Charles Wick thought that what he was doing was entirely appropriate because he denied it when he was confronted with it.

I have never known anyone to tell a lie about something he is proud of, and so it is difficult for me to believe that Charles Wick thought what he was doing was what an ordinary all-American boy would do.

I would also guess that Charles Wick—like anyone else—would have been insulted and outraged if he had found that he was being taped without his knowledge.

Think about this. He called a former President of the United States on the telephone and said: "Mr. President, what do you think about arms control talks?" I do not think President Carter would have objected at all if Mr. Wick had said: "Mr. President, we would like to have your voice recorded to use in USIA's broadcast." My guess is President Carter would have been flattered and honored as any of us would have been. But Mr. Wick didn't do that. Instead, he taped President Carter without telling him.

When I call the radio stations back in Arkansas, they always say: "Thank you, Senator, for returning my call. Let me get a tape rolling here, OK?" I know I am being recorded. I am calling because I know they are going to record my voice. Naturally, I hope, it is heard by every single citizen in the State.

But back to the issue of fairness, can you think of anything as unfair—completely forget the criminal violation whatever penalty may go with recording someone's telephone conversation without their knowledge, just think of the proposition of basic fairness. Is it fair for someone to tape record your conversation without telling you? There can only be one reason for not telling the other party, and that is because you either want to cover yourself or you want to entrap him.

That brings me to the second point. Not only is it unfair, but even law enforcement officers have to be very careful about their right, which they

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have under the law and which they will continue to have, to record telephone conversations without telling the other party. And they can and should continue to have that right.

But even law enforcement officers have to be very careful if they are trying to make a case about the tone of the conversation and how they lead the party on the other end. Otherwise, they will lose their case because of the law of entrapment. You know, you cannot lead somebody by the hand down to rob the local bank and make a case against him, because that is what is meant by entrapment. That is where a law enforcement officer actually encourages the commission of a crime or an admission against interest in order to build a case against that person. It flies right into the face of the fifth amendment privilege against self-incrimination. And not only is it unfair, it is illegal, and it is immoral.

Somebody asked me the other day: "Well, does your bill exempt the press?" No, my bill, S. 2205, does not exempt the press. Who should have a keener respect for the privacy of the people than the press? I talked with three or four people in the press and every one of them thinks this is the greatest proposal since night baseball. Every one of them told me that they had never taped a conversation with a Senator or anybody else without first letting him know.

It is seldom a member of the writing press records anything without advising the other party. I do not recall ever having had a call from a member of the writing press saying: "Senator, do you mind if I record this?" I have had a lot of members of the writing press walk into my office for interviews and say: "Senator, do you mind if I turn this recorder on?" And the answer is always: "Not at all." I am not going to say anything with that recorder on or off to a reporter that I do not want reported.

But, you see, then we are playing by the same rules. We both know they are recording it. And if I slip up and say something outrageous or improper, then it is just too bad for me. But at least we know what the ground rules are on the front end.

What we are trying to do here with Senator METZENBAUM's and my amendment is to remedy an outrageous situation that has come to our attention. And the remedy is simply that if you are an elected official, or an employee, or agent of the United States, you may not tape record a telephone conversation without prior consent of the person at the other end of that conversation. This is very narrow, very limited, and, for my money, just a first step.

Now when you call the Secretary of the Interior, as I did just last week—and I said some nice things to him, even though I opposed his confirmation on the floor of the Senate; I complimented him on a couple of decisions he has made recently—I did not expect

him to be tape recording that conversation. And I will bet you, because he is a former judge, that he did not record that conversation.

But I can tell you one thing: I want to know in the future, when I am talking to people in the bureaucracy, if the call is being recorded. If I call and say: "I know it is going to cost \$12 million to do it but I want you to get over to Pennsylvania and start killing all of those chickens with avian flu, otherwise it is going to get to Arkansas and that is our second biggest industry" I want to know—as anyone would—if that is recorded. I am telling you this now, just in case that call was recorded you have already heard it.

Everyone has unguarded moments on the telephone. He does not expect or she does not expect that to be played on the airways or appear in the press.

I think there are 80 tapes of Charles Wick's sitting over in the Senate Foreign Relations Committee waiting to be examined. And there is not a Member of the U.S. Senate who does not think that those tapes will surface in the press—that is the juicier parts of them; nobody will be interested in about 95 percent of those tapes. But any Member of the U.S. Senate who does not think the juicier parts of those tapes will surface on the front pages of newspapers in this country believes in the tooth fairy.

Jim Baker, the top aide to the President of the United States, has already found out what can happen. Think about it. James Baker III, Presidential Chief of Staff, not only recorded without his knowledge. It just shows that nobody is exempt. The man who sits at the right hand of the President has been taped.

What if somebody called a Member of this body and said, "Senator, do you want me to hit so-and-so up for \$1,000 contribution for you?" The Senator says, "Well, I wouldn't mind that."

The voice on the other end: "You voted for S. 924 last year and that probably means a lot of money to him. He sure ought to reciprocate by giving \$1,000."

I promise you that that kind of a conversation may not be improper, but it is not unheard of. And I do not think that any Senator around here would want to hear that played back to him the next time he ran. Not very becoming, not anything any Senator would be proud of, and yet the sort of thing that virtually every Member of Congress probably at some time or other has found himself engaged in. Probably just a little banter, meaningless conversation in tone and sound, but devastating in black and white on white paper.

At one time, I almost reached the point where I would not tell a joke at a banquet, because if there is anything the press cannot do, they cannot replicate a joke correctly to save their lives.

I once read the best joke I ever had in the New York Times—one of the best newspapers on Earth—and I have never seen anything as fouled up as that joke was. They got just enough of it right to keep me from ever telling it again, because everybody had read it.

And it is not only reporting errors. There is a lot of humor that is funny on the spot to an audience who will roar with laughter, but when it comes across in the press the next day and 500,000 people see it, there is something about it that makes you sound arrogant, trite, flippant—anything but funny.

Telling jokes as a politician can be a very dangerous business, and I love to do it. To tell you the truth, I would not vote for a justice of the peace who did not have a good sense of humor and know what kind of jokes to laugh at. It is the same situation here. You engage in a telephone conversation in that easygoing banter between parties who are friends maybe, or maybe who are not so close, but hoping maybe to be a little closer than they are. And it is cute, funny, in the conversation, but once you transcribe it, it does not look funny at all.

Mr. President, as I have just told you, the amendment the Senator from Ohio and I are offering here today goes only to Federal employees and officials—elected officials, appointees, Cabinet level on down may not record conversations without people's consent.

Let me state again that this amendment does not impinge upon or affect or impede, or in any way affect law enforcement officers. They can still record, they can tape body recorders on people to go and break up a drug ring, or whatever. They can do all of those things as they always have been able to do. We are just talking about people in the Federal bureaucracy, for the most part. It is a very narrow thing, and yet it is a beginning.

Third, before we finish debate on this amendment and vote on it. I want to go back where I began and say that the bill that I introduced the other day S. 2205, is broader than this. I do not think anybody ought to tape-record any body without their consent and knowledge, because the same arguments that apply for this very limited, narrow amendment apply to a broad cross-section of the public. You just ought not to do it.

Charles Wick has been caught. I daresay there are hundreds who have not been caught in the Federal bureaucracy. What kind of mentality does it take to surreptitiously, deviously, and insidiously carry on a conversation with somebody and not tell them that you are taperecording it? Ninety percent of the laws of this country have been passed as a result of an abuse, an abuse of the public trust, or an abuse whatever. As I say, Charles Wick is not the issue. Nobody should vote for or against this issue because

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of Charles Wick. He is home free. He is clean. He says, "I am not going to do it anymore." He appears to be fairly contrite, and I take him at his word. But that is not the issue here. The issue here is we ought not to allow people's privacy to be invaded without punishment.

I saw several stories, and you did, too indicating that Charles Wick was told that to record conversations was a violation of GSA rules and regulations. And he ignored that. So it occurs to me that not only did he know he was doing something wrong, not only did he lie about it after the fact, but if we are just going to slap him on the wrist, and anybody else who is willing to take the heat to do it, then we are back to square one.

So what Senator METZENBAUM and I are trying to do is to put some teeth in the law and say, "If you invade somebody's privacy so outrageously, be prepared to be indicted and maybe go to jail or pay a very heavy fine for it." All the objections in the world you can raise to this will not erase the fact that it is an egregious practice. All the arguments in the world will not overcome the proposition that all you have to do is to say, "Do you mind if I record this conversation?" That is decent, that is fair, it is honest. What is wrong with it? Anybody who votes against it should go home and explain to the folks back home why he or she has just voted to allow some bureaucrat to invade their privacy with impunity.

Mr. President, every time I read a biography of Ben Franklin, James Madison, John Adams, or especially Thomas Jefferson, I just think about how lucky we are to have had that many great minds—not just that many great minds in the country, but that many great minds in Government. We have great minds in this country right now. There were only 5 million people in this country at the time of the Revolutionary War, and the best brains were in Government. Now you literally have to plead, beg, and cajole, use every argument known to man, to try to get good, decent, intelligent people to seek public office.

I do not want to get too far afield, but I have always been very proud to say that I came from a family where my father encouraged me to get involved in politics. I daresay there are few parents today who will encourage their children to get involved in the political process. I am amazed that we do as well as we do.

There is no question that the Congress continues to go downhill in public esteem in this country. And why would it not? You tell me somebody who does not run against Congress—instead of for Congress—and I will have his name put in "Believe It or Not." It is not just the President telling the American people that all the evils that have been inflicted upon them, now or ever, were because of Congress. Almost every Member of

Congress goes home and runs against the Congress.

So is it any wonder that we have now replaced used car dealers in the 20th spot of the 20 most respected professions in the country?

That brings me back to where I started. Not only were Thomas Jefferson and his contemporaries brilliant people in Government; they were considered by the American people to be the cream of the crop.

You think about those brilliant minds sitting around and drafting a document that says, "You may not invade somebody's privacy; you may not go busting somebody's door down without a search warrant." And I am serving notice right now that I am not going to vote for the bill coming up here which would narrow the exclusionary rule, either.

I know what makes everybody applaud and stand and cheer and brings people to their feet, but not necessarily to their senses. I think the crime rate in this country is a national indictment of everything that is going on in our society. But I know something else: The first thing Adolph Hitler did was get control of the judiciary and get control of law enforcement. When you have law enforcement and the judiciary under your control, then you can forget about all those freedoms that are guaranteed in the Constitution.

I have the utmost respect for law enforcement officers. They go out and risk their lives daily so we can live in a half-safe society. But when you start saying "Yes, you can invade somebody's home or their person without a warrant if you have reason to believe this, or that, or the other," you are treading on dangerous ground.

Those people who wrote the Constitution said you cannot do it. You just cannot go busting into people's homes without a search warrant and good cause. Talk to the Jews who came from Germany and you will find that what kept them in absolute desperation, and unbelievable fear was that midnight knock on the door. Because they knew that the law and the judges would not protect them. There was nobody to protect them from anything that Adolph Hitler ordered.

It amazes me that Madison and Hamilton were wise enough to know that almost 210 years later, we were going to be on the floor of the U.S. Senate, still saying the absolute essential of freedom is freedom from the invasion of your privacy in your own home, freedom not to have your person or your home invaded by people operating under color of law without first giving you a chance to know why.

That is all pretty high-powered stuff just for this Senator, but it goes right to the heart of this amendment. We are talking about people's freedoms. We are talking about their privacy. We are talking about the fundamental guarantee that most people of this

country thought they already had and did not. So we are not going to vote on this amendment tonight.

I hope other Senators who may accidentally have heard me in their offices, and the Senator from Ohio who feel equally strong about this amendment and what is involved here, will come to the floor tomorrow and speak their minds on this very important piece of legislation. But I hope it is just a beginning at stopping what has become, in my opinion, a fairly pervasive and dangerous practice in this country.

Mr. President, I am prepared to yield the floor to any Senator who wishes to speak. I know the Senator from Vermont (Mr. LEAHY) is a cosponsor. I see him on the floor. I assume he wishes to speak on this amendment. I yield to him.

Mr. LEAHY. Mr. President, I ask unanimous consent to be able to yield briefly to the Senator from Ohio without losing my right to the floor.

The PRESIDING OFFICER. Without objection, the Senator from Ohio.

Mr. METZENBAUM. I am very pleased to ask the Chair to add Senator BYRD, Senator CRANSTON, and Senator EXON as cosponsors of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. I thank the Chair and I yield back to my good friend from Vermont.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I know that many of my distinguished colleagues in both Houses of the Congress were as shocked as I was to learn that only a decade after Watergate, a high official of this Government had apparently forgotten the revulsion felt across this country when American citizens learned of wholesale secret taping in the Oval Office. I refer, of course, to the repeated secret taping of telephone conversations by U.S. Information Agency Director Charles Z. Wick.

Mr. Wick's callousness toward the invasion of privacy and decency that he was committing permitted him to ignore both the ethics of his profession and the advice of his General Counsel. While Mr. Wick's action in making his secret recordings was prohibited under a General Services regulation and would have been a felony under the laws of some States, his secret tapes included—unbeknownst to them—a former President, high White House officials, ambassadors, journalists, and my esteemed colleague, the distinguished senior Senator from Oregon. That Senator, correctly in my view, indicated extreme displeasure when he learned the news.

Ironically, under our current statutes, however, Mr. Wick's secret taping seemingly broke no Federal law. The amendment which I am pleased to cosponsor today will amend

that state of affairs by changing the law to prevent such actions from occurring in the future. In light of my longstanding commitment to personal privacy I cannot stand by and allow any ambiguity to remain whether this kind of conduct is acceptable for U.S. Government officials.

The amendment which I join Senator METZENBAUM, Senator BUMPERS, and Senator BYRD in proposing will not interfere with any legitimate work of our Government. It will assure every person of the United States—whether he or she holds a position of high responsibility or visibility, or on the other hand is obscure and relatively unknown—that he or she may converse freely with representatives and officials of the Federal Government, secure in the privacy of those communications unless that person consents to their conversation being preserved and thus accepts the consequent risk of disclosure. This amendment is consistent with other laws passed by Congress in the interest of the privacy of U.S. citizens.

But let me be very clear. Nothing in this bill alters the state of the law with regard to the investigative and law enforcement work of Federal officials. An investigative or law enforcement officer acting within the normal course of his or her employment or a person acting under such an officer's direction may legally continue to record telephone conversations to which he or she is a party or where or of the parties has given prior consent. That is explicitly stated in our amendment. This amendment is carefully drafted not to interfere with crime prevention or the apprehension of criminals. It will catch in its net only those who wrongly use the color of law to cloak their personal invasions of privacy and decency of those with whom they converse.

While I speak on the subject, Mr. President, I call my colleagues' attention to broader aspects of our wiretapping laws that may require revision to keep pace of newly developed and developing technologies. There is at best great ambiguity whether and, if at all, to what extent current law provides protection for privacy of information that is communicated by computers in digital rather than vocal form. I have written to the Attorney General to request his views on the current state of the law.

Attention has recently been drawn to the FBI's use of secret video surveillance in a private residence in order to obtain evidence of crime. A Federal district judge has banned the use of such video tapes as an unreasonable search and seizure, and that ruling is now on appeal, as it should be.

If on review the use of secret video taping were to be upheld, the Congress may well wish to consider whether as a matter of policy—and if so under what limitations—this intrusive form of search may be permitted. It may also be wise to review how well

current law is working with respect to more conventional forms of surveillance and wiretapping.

We hear a lot about wiretapping. We hear a lot about surveillance but, quite frankly, we have heard very little about whether it works, how pervasive it is, whether it actually accomplishes something or whether it is a good and valid law-enforcement tool. You have people on one side of the argument saying that it is terrible, it is Big Brother, it really is 1984, and others who say that it is absolutely necessary; that all law enforcement would cease without it. I rather suspect that the facts are somewhat different in both cases and we ought to be able to look at that.

This matter is too large and complicated to expect that we can resolve all these issues in this short and crowded session, especially at a time when the state of the art is constantly changing, and what might be done by surveillance techniques.

Yet, it is none too soon to begin hearings aimed at developing comprehensive legislation designed to deal with the state of the art changes. Mr. KASTENMEIER in the other body has been holding hearings that touch on these matters. Quite frankly, the Senate should do likewise.

Nonetheless, the anticipation of comprehensive legislation should not deter us from adopting our amendment now under discussion. The amendment treats a discrete issue. It serves a purpose vital to the privacy of everyone, and it is directly linked to the respect the citizenry can have for its Government. The amendment is ready. I think it should be passed.

And so with that, Mr. President, I would be happy to yield the floor. But I do not know whether the distinguished drafter of this amendment initially, the Senator from Ohio, wishes to comment further. If he does, then I would yield the floor to him.

Mr. METZENBAUM. I would appreciate it if the Senator from Vermont would yield.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, the amendment pending at the desk I wish to amend by adding, in line 14, the following language:

or foreign intelligence or counterintelligence.

The Senator from Ohio is under the impression that under the rules I am permitted to amend my pending amendment without asking for consent.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. METZENBAUM. I will send a copy, as amended, to the desk.

The PRESIDING OFFICER. If the Senator will send a copy to the desk, the amendment will be so modified.

Mr. METZENBAUM. Mr. President, I am not certain as to whether or not there are certain other Members of this body who are cosponsors or others who wish to be cosponsors or others who are interested in the subject of the bill, but I had heard the leader say at an earlier point that we would recess or adjourn at 6 o'clock. I forget the terms that he used. I have not heard of anybody who wishes to be heard at the present time. I do not know whether or not the Senator from South Carolina wishes to be heard. It is our intention to debate this issue further in the morning and to give other Senators who wish to be heard on the subject an opportunity to be heard. I think that I would probably speak again. My opinion is that the Senator from Arkansas would probably speak again. Upon the conclusion of that and depending upon the position of the Senator from South Carolina and the manager, the Senator from Delaware, we would be prepared to go to an up-or-down vote. I am trying to advise my colleagues of the status of the matter on the floor. We do not intend to keep the debate going unnecessarily, but we do want those who wish to be heard to have an opportunity to be heard on the subject.

If the Senator from South Carolina wishes to be heard at the present time, I will certainly yield the floor to him. If not, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that Senator HUBLESTON be added as an additional cosponsor to the measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I wonder if I may ask the distinguished Senator from Ohio a question about the modification he made to his amendment.

Mr. METZENBAUM. I yield to the Senator from Vermont.

Mr. LEAHY. Mr. President, I ask the Senator from Ohio if I am correct in my understanding that with the modification in the amendment to exempt foreign intelligence or counterintelligence activities, our amendment now

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will not prohibit tape recording of telephone conversations by U.S. Governmental officials pursuant to activities authorized by the Foreign Intelligence Surveillance Act or any statute authorizing foreign intelligence or counterintelligence activities.

Mr. METZENBAUM. The Senator is right on point. That is exactly the point of the modification I sent to the desk.

I certainly would not want in any way to affect the activities of foreign intelligence or counterintelligence agencies. I said previously that should the Department of Justice or anyone in any of our law enforcement agencies indicate that there is anything in the draft of this legislation that interferes with their normal activities or extraordinary activities, we are prepared to support an amendment.

I think we have covered the point the Senator from Vermont makes, and my answer is, "Yes."

Mr. LEAHY. I thank my friend from Ohio.

Mr. President, I ask the question obviously to make sure that was on the record as part of the legislative history.

I know that was the intent of the Senator from Ohio, and I appreciate that. With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, there is an order entered for the convening tomorrow morning at 10 a.m.

The PRESIDING OFFICER. At 10 a.m.; the Senator is correct.

Mr. STEVENS. I thank the Chair.

CALENDAR

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar No. 554, and I inquire of my friend if it is agreeable to deal with these two bills en bloc.

Mr. BYRD. Mr. President, I am happy to respond to the distinguished assistant Republican leader in the affirmative.

Mr. STEVENS. I thank my friend.

Mr. BYRD. It is interesting, if I may ask the assistant Republican leader, how I could have answered that question in one word, saying yes indeed, instead of going through all that circumlocution.

Mr. STEVENS. I am sure that my good friend would not use too many words at any time.

CODIFICATION OF RECENT LAWS

The bill (H.R. 2727) to codify without substantive change recent laws related to money and finance and transportation and to improve the United States Code, was considered, ordered to a third reading, read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

USE OF PROXIES BY THE BOARD OF THE PANAMA CANAL COMMISSION

The bill (H.R. 3969) to amend the Panama Canal Act of 1979 to allow the use of proxies by the Board of the Panama Canal Commission, was considered, ordered to a third reading, read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE EXECUTIVE CALENDAR

Mr. STEVENS. Mr. President, I inquire of my good friend, the distinguished Democratic leader, if it would meet with his approval if I sought to take the Senate into executive session for the purpose of considering Calendar Order No. 444, the nomination for the Corporation for Public Broadcasting.

Mr. BYRD. Mr. President, I shall not give a senatorial answer at this time. I will simply say yes.

Mr. STEVENS. I thank the Senator.

EXECUTIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of considering Calendar No. 444 on the Executive Calendar.

There being no objection, the Senate proceeded to consideration of executive business.

The PRESIDING OFFICER. The nomination will be stated.

CORPORATION FOR PUBLIC BROADCASTING

The assistant legislative clerk read the nomination of William Lee Hanley, Jr., of Connecticut, to be a Member of the Board of Directors of the Corporation for Public Broadcasting.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ELEVEN GOLD MEDALS WON

Mr. BYRD. Mr. President, today is special for the Senate and the House of Representatives. This morning in the Cannon House Office Building Caucus Room, the first 11 Congressional Award Gold Medal winners were honored. From Minnesota and Illinois, those 11 winners were recognized for reaching approved individual goals in personal growth, community service, and physical development. I know that all of our Senate colleagues join me in congratulating those young Congressional Award winners.

As Congress intended in establishing this award, the Congressional Award program is expanding and is being received well. Currently, Congressional Award Council presidents are working in several congressional districts in New Jersey, Texas, Wyoming, Pennsylvania, and West Virginia, in addition to those in Minnesota and Illinois. The organizational goal is a Congressional Award network all across the country to give as many young men and women as possible a chance to take on the personal challenges offered by the Congressional Award.

I want to thank the many people who are working to make the Congressional Award program a success. A distinguished Board of Directors includes representatives of government, education, business, labor, communications, science, and the professions. The Chairman of that Board is Mr. John G. McMillan, and the founding Chairman is Mr. W. Clement Stone.

I commend all of those active men and women for the time that they are volunteering to the Congressional Award program, and I look forward, as I know that all of our colleagues do, to the growing importance and effectiveness of the Congressional Award in the lives of young Americans in the years ahead.